

EXHIBIT 43

Vito, Robert

June 19, 2007

Philadelphia, PA

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

- - -

IN RE: PHARMACEUTICAL : MDL NO. 1456
INDUSTRY AVERAGE WHOLESALE : CIVIL ACTION:
PRICE LITIGATION : 01-CV-12257-PBS

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THIS DOCUMENT RELATES TO :
U.S. ex rel. Ven-A-Care of :
the Florida Keys, Inc. v. :
Abbott Laboratories, Inc. :
No. 06-CV-11337-PBS :

- - -

Videotaped deposition of ROBERT
VITO was taken, pursuant to notice, at MORGAN
LEWIS & BOCKIUS, LLP, 1701 Market Street,
Philadelphia, Pennsylvania, on Tuesday, June
19, 2007, beginning at 9:10 a.m., before M.
Kathleen Muino, Professional Shorthand
Reporter, Notary Public; Michael Hunterton,
Certified Legal Video Specialist, there being
present:

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1 BY MR. TORBORG:

2 Q. And at the out -- at the outset --

3 MR. TORBORG: I want to skip that one
4 too. Let's go to the next two.

5 BY MR. TORBORG:

6 Q. I'd like to start off by handing you a
7 couple of the reports that your office did.

8 THE WITNESS: Thank you. Thank you.

9 MR. TORBORG: For the record, I've handed
10 Mr. Vito copies of Exhibit Abbott 030, which is the
11 June 1996 OIG report titled, Suppliers' Acquisition
12 Costs for Albuterol Sulfate; as well as Exhibit
13 Abbott 060, which is a June 1996 OIG report titled,
14 A Comparison of Albuterol Sulfate Prices.

15 BY MR. TORBORG:

16 Q. Mr. Vito, I believe you'll tell me that
17 you're familiar with these reports and that they
18 were prepared under -- under your direction, in
19 your office. Is that right?

20 A. Yes, sir.

21 Q. And just to try to orient ourselves to
22 the reports, if we go to Exhibit Abbott 030, the

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1 suppliers' acquisition --

2 A. Okay.

3 Q. -- report, to the purpose on -- under
4 the Executive Summary. In that report, you were
5 examining suppliers' acquisition costs for
6 albuterol sulfate and comparing it to Medicare
7 allowances; is that right?

8 A. Yes, we were getting the acquisition
9 costs from suppliers and then comparing that to the
10 Medicare allowance.

11 Q. And then if we can go to the other
12 report --

13 A. Okay.

14 Q. -- A Comparison of Albuterol Sulfate
15 Prices, if we look under the Executive Summary,
16 under Purpose, the Purpose states: To assess the
17 appropriateness of the amount Medicare allows for
18 albuterol sulfate, a prescription inhalation drug
19 used in nebulizers.

20 And then under Background, the third
21 paragraph, the report states: We surveyed
22 pharmaceutical buying groups, mail order

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1 pharmacies, and retail pharmacy stores and compared
2 their prices for generic versions of albuterol
3 sulfate to the amount that Medicare allows.

4 Did I read that right?

5 A. Yes.

6 Q. And were you involved in these two
7 reports?

8 A. Yes.

9 Q. Now, both of these reports have a number
10 and a report 94 --

11 A. Yes.

12 Q. -- correct? And --

13 A. Yes.

14 Q. -- what -- what does that signify?

15 A. It's the -- when we start a job, we're
16 asked to give a -- get a CIN number, and this was
17 the number that they provided to us. Generally
18 speaking, it usually means that you started in '94;
19 however, the -- the conventions used by our office
20 did not always follow that -- that pattern.

21 Q. Do you have any reason to believe that
22 these two reports here that bear a 94 number did

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1 not follow that pattern?

2 A. Well, they were both issued at the same
3 time, and they -- they have just one digit
4 difference, the 93 and the 92, so I -- I -- I -- I
5 don't know exactly the time frame that we did
6 these, but I am familiar with both of them.

7 Q. And the 94 -- I understand some -- from
8 some prior testimony in the case that there was a
9 -- a fiscal year at OIG that started, I believe, on
10 October -- or -- or November 1st.

11 A. The -- the -- the --

12 Q. Can you tell me about that? Like fiscal
13 year 1994 would --

14 A. Would -- would start on October 1st.

15 Q. October 1st. Sorry, I was one month
16 off. October 1st, nineteen-ninety --

17 A. If -- if -- if you're in 1995, it would
18 start, I believe, in October of 1994, and then it
19 would end in September 30th, 1995.

20 Q. Okay. Got it. So these reports, if the
21 convention holds, were started sometime be --
22 between what point and what point?

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1 A. I -- I believe they were probably -- I
2 don't -- I don't know the exact time frames on
3 them. I'll try to locate that. Usually I could
4 see that, if you give me a minute. Okay. ...
5 requests.

6 Okay. The -- I don't know exactly the
7 specific time frames that -- I -- I mean, are you
8 looking at the year we did the review or -- or --

9 Q. When the --

10 A. -- when it started?

11 Q. -- report was initiated.

12 A. I don't know specifically when it was
13 initiated. I do know that it was signed out in
14 June of 1996, and it probably, depending upon how
15 long it takes the process to ease through our
16 headquarters, could be anywhere from six to eight
17 months beforehand or even longer when we started
18 the -- the review.

19 Q. But the 94 in these reports, you
20 indicated, would signify what to you?

21 A. It -- it -- it -- it signifies the year
22 in which you started the review. At least, I mean,

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1 that's generally the way it works. Sometimes we
2 could start a job now and they'll give us a number
3 that wouldn't say 07, it might say 06.

4 So, again, generally speaking, the conventions
5 would be if you were starting a job, then they
6 would give you -- if you started in '04, they would
7 give you an 04 number.

8 Q. Would it be a fair inference to conclude
9 that this -- these two reports were started
10 sometime between October 1st, 1993 and September
11 30th, 1994?

12 A. Not -- not -- no, not for certain on
13 that, because I -- I believe -- you're referring to
14 the fiscal year as it's defined by the department.
15 I -- I'm not sure at -- at this time that we used
16 that. We might have used calendar years.

17 Q. You're just not sure either way?

18 A. I'm not sure.

19 Q. Do you recall what led OIG to perform
20 these analyses on albuterol sulfate?

21 MR. NEAL: I'll object to the form.

22 You can answer.